UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

GEORGE CATALANO, on behalf of himself and all others similarly situated, Plaintiff, v. BMW of NORTH AMERICA, LLC, a New Jersey limited liability company; and BAYERISCHE MOTOREN WERKE AKTIENGESELLSCHAFT, a corporation organized under the laws of the Federal Republic of Germany, Defendants.	Case No. 1:15-cv-04889-KBF **MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS FOR SETTLEMENT CLASS REPRESENTATIVES**

TABLE OF CONTENTS

I. INTRODUCTION 1

II. ARGUMENT 4

A. Class Counsel's Request For Attorneys' Fees Satisfy The Goldberger Factors 6

1. Class Counsel Expended Significant Time and Labor In This Litigation 6
2. The Underlying Litigation Was Large And Involved Complex Factual and Legal Issues 7
3. Class Counsel Faced Significant Risks At Every Stage Of The Litigation 8
4. High quality representation exists here. 9
5. The Requested Fee Represents A Miniscule Percentage Of The Overall Value Of The Settlement 10
6. Public Policy Favors Approving Class Counsel's Requested Fee 10

B. A Lodestar Analysis Supports Class Counsel's Requested Attorneys' Fees 11

C. Percentage of the Fund "Cross-Check" 13

D. Reasonable Reimbursement of Expenses 14

E. Class Counsel's Request For Service Awards to the Class Representatives Is Reasonable . 15

III. CONCLUSION 16

TABLE OF AUTHORITIES

Cases

Anwar v. Fairfield Greenwich Ltd.,
No. 09-cv-118 (VM), 2012 U.S. Dist. LEXIS 78929 (S.D.N.Y. June 1, 2012) 14, 15, 16

Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cty. Of Albany,
522 F.3d 182 (2d Cir. 2007) 11

Bellifemine v. Sanofi-Aventis U.S. LLC,
2010 U.S. Dist. LEXIS 79679 (S.D.N.Y. Aug. 5, 2010) 5, 13

Dupler v. Costco Wholesale Corp.,
705 F. Supp. 2d 231 (E.D.N.Y. 2010) 16

Fleisher v. Phoenix Life Ins. Co.,
Nos. 11-cv-8405 (CM) and 14-cv-8714 (CM), 2015 U.S. Dist. LEXIS 121574 (S.D.N.Y. Sept. 9, 2015) 14

Goldberger v. Integrated Res., Inc.,
209 F.3d 43 (2d Cir. 2000) 4, 6, 11

In re Colgate-Palmolive Co. ERISA Litig.,
36 F. Supp. 3d 344 (S.D.N.Y. 2014) 16

In re Initial Public Offering Secs. Litig.,
671 F. Supp. 2d 467 (S.D.N.Y. 2009) 11

In re Sony SXRD Rear Projection TV Class Action Litig.,
No. 06 Civ. 5173 (RPP), 2008 U.S. Dist. LEXIS 36093 (S.D.N.Y. May 1, 2008) 5, 13

Jermyn v. Best Buy Stores, L.P.,
No. 08 Civ. 214 (CM), 2012 U.S. Dist. LEXIS 90289 (S.D.N.Y. June 27, 2012) .... passim

Morris v. Affinity Health Plan, Inc.,
859 F. Supp. 2d 611 (S.D.N.Y. 2012) 13

Reichman v. Bonsignore, Brignati & Mazzotta, P.C.,
818 F.2d 278 (2d Cir. 1987) 14

Reyes v. Altamarea Group,
No. 10-cv-6451 (RLE), 2011 U.S. Dist. LEXIS 115984 (S.D.N.Y. Aug. 16, 2011) 15

Seijas v. Republic of Argentina,
Nos. 04-cv-400 (TPG); 04-cv-401 (TPG); 04-cv-506 (TPG); 04-cv-936 (TPG); 04-cv-937 (TPG); 04-cv-1085 (TPG); 04-cv-2117 (TPG); 04-cv-2118 (TPG); 06-cv-15297 (TPG), 2017 U.S. Dist. LEXIS 64398 (S.D.N.Y. Apr. 27, 2017) 4, 11

Shapiro v. JPMorgan Chase & Co.,
Nos. 11 Civ. 8331 (CM) (MHD) and 11 Civ. 7961 (CM), 2014 U.S. Dist. LEXIS 37872 (S.D.N.Y. Mar. 21, 2014) 5, 8, 11

Sharma v. BMW of North America, LLC,
Case No. 3:13-cv-02274-MMC (N.D. Cal.) 2, 7, 8, 12

Velez v. Novartis Pharm. Corp.,
No. 04 Civ. 09194 (CM), 2010 U.S. Dist. LEXIS 125945 (S.D.N.Y. Nov. 30, 2010) 12, 13, 14

Other Authorities

Freedom of Information Act 7

Rules

Federal Rule of Civil Procedure 30(b)(6) 7

I. INTRODUCTION

Class Counsel has achieved significant economic and noneconomic relief for over 300,000 Class Vehicle owners and lessees throughout the United States through a settlement that resolves litigation in two states that commenced four years ago.[1] As part of the Settlement, Class Members will be entitled to reimbursements and inspection, relocation and repair or replacement benefits that directly and effectively address the core issues in this litigation—the allegedly defective location of sensitive electronic modules in the lowest part of the trunk compartments of Class Vehicles where they are subject to water damage.

Specifically, the Settlement allows Class Members to recover up to *$1,500* in eligible out-of-pocket expenses incurred for relocation, repair, or replacement of the RDC, PDC, MPM, TCU, LOGIC-7, and SDARS modules in Class Vehicles due to water intrusion. In addition, consistent with BMW of North America, LLC's ("BMW NA") technical service bulletin SI B61 13 06 ("TSB"), BMW NA and Bayerische Motoren Werke Aktiengesellschaft ("BMW AG") (collectively, "Defendants" or "BMW") have agreed to extend benefits to a nationwide class consisting of inspecting and relocating RDC, PDC, MPM, TCU, LOGIC-7, and SDARS modules at an authorized BMW Center. If the authorized BMW Center determines that any of these modules have suffered water damage, subject to certain exclusions, they will be repaired and replaced. These inspections, relocations, and repairs or replacements are provided to Settlement Class Members *free of charge*. Furthermore, during the appointment, a label that warns owners

[1] Plaintiff incorporates by reference the defined terms of the Settlement Agreement and Release ("Settlement" or "Settlement Agreement"). "Class Counsel" is defined at section I.H. of the Settlement as Kershaw, Cook & Talley PC, Wexler Wallace LLP, The Law Office of Robert L. Starr, and The Law Offices of Stephen M. Harris, P.C. The Settlement is attached as Exhibit 1 to the Declaration of Amy E. Keller in Support of Plaintiff's Unopposed Amended Motion for (1) Preliminary Approval of Class Action Settlement; (2) Provisional Certification of the Settlement Class; (3) Appointment of Class Counsel; (4) Approval of Class Notice, Claim Form and Dissemination of Class Notice; and (5) Setting a Hearing for Final Approval. [Dkt. No. 126-1].

and lessees of Class Vehicles against spilling liquids in the trunk will be affixed to the trunk of the Class Vehicles.

These benefits were achieved after several years of intensive efforts by experienced counsel to investigate, develop, prosecute and ultimately resolve this complex, multi-state class action litigation. This case involved substantial factual and legal complexities and was fraught with risk from the outset. For instance, Class Counsel met and communicated with automotive consultants over the course of the litigation to understand the modules and electronics located in the trunk compartment of the Class Vehicles and the impact of water damage on those modules and other electronics. Class Counsel also investigated, researched, analyzed and litigated the impact of the alleged defect on safety risks to Class Vehicle owners and lessees. Furthermore, plaintiffs' claims were at risk of dismissal based, in part, on standing, causation, whether their claims had been adequately pled, and statute of limitations issues. BMW AG and BMW NA also argued that the Court lacked personal jurisdiction over claims asserted against BMW AG. Even after jurisdictional issues were resolved, Class Counsel faced the possibility of taking costly discovery of a foreign defendant, including depositions of BMW AG in Germany. In addition, plaintiffs' class claims were vulnerable based in part on potential variations involving six model years of Class Vehicles, impacts of water intrusion on Class Vehicle electrical systems, and Class Members' reactions to malfunctions concerning the RDC module (tire pressure monitor).

Despite these significant hurdles, Class Counsel vigorously and simultaneously pursued plaintiffs' claims in two states. For example, in *Sharma v. BMW of North America, LLC*, Case No. 3:13-cv-02274-MMC (N.D. Cal.) ("*Sharma* Action"), plaintiffs overcame three motions to dismiss and strike class allegations, prevailed on their motion for reconsideration, survived summary judgment as to Plaintiff Eric Anderson's claims regarding 2004-2010 5-series vehicles, and moved to compel and filed several discovery letter briefs following approximately *fifteen* substantive meet and confer letters.

Similarly, in the *Catalano* Action, Plaintiff Catalano overcame two motions to dismiss filed by BMW NA and BMW AG, as well as significant challenges to personal jurisdiction. Plaintiff also moved to compel BMW AG to respond to his discovery requests, which resulted in an order requiring BMW AG to respond pursuant to the Federal Rules of Civil Procedure and a document production schedule under threat of sanctions based on Plaintiff's narrowed document requests.

Class Counsel approached resolution of these Actions with the same intensity that they investigated and litigated them. On November 4, 2016, Class Counsel engaged in hard-fought settlement negotiations over the course of a full-day mediation, with the assistance of a well-respected and experienced mediator—Bradley A. Winters, Esq.—in New York City. Negotiations ran well into the evening and threatened to breakdown on several occasions. In addition, Class Counsel engaged in several additional months of negotiations in writing and by telephone with Defense Counsel to finalize the terms of the Settlement and Settlement-related documents. Class Counsel's unwavering efforts have resulted in an extraordinary result for the Settlement Class.

As compensation for the efforts expended to achieve this excellent recovery, Class Counsel are requesting a total amount of $1,787,500 spread among four firms for reasonable attorneys' fees, reimbursement of expenses and costs, and a $3,500 service award for each Class Representative. The prosecution of these Actions was undertaken by Class Counsel on an entirely contingent basis. As described below, Class Counsel incurred $169,691.95 in unreimbursed expenses and spent over 5,601 hours litigating and prosecuting these Actions.

Class Counsel's requested attorneys' fees amount to a ***negative multiplier*** under a lodestar analysis and constitute a miniscule proportion of the monetary and nonmonetary relief achieved under the Settlement. Their requested fee is eminently fair and reasonable. Defendants do not oppose Class Counsel's request for attorneys' fees, reimbursement of expenses and Service Awards for the Class Representatives and, importantly, approving these requests will ***not diminish the relief available to the Settlement Class***.

For the reasons described below, Class Counsel's motion for attorneys' fees, reimbursement of expenses and Service Awards for the Class Representatives should be granted.

II. ARGUMENT

"Class counsel is entitled to collect reasonable attorneys' fees, as determined by the court." *Seijas v. Republic of Argentina*, Nos. 04-cv-400 (TPG); 04-cv-401 (TPG); 04-cv-506 (TPG); 04-cv-936 (TPG); 04-cv-937 (TPG); 04-cv-1085 (TPG); 04-cv-2117 (TPG); 04-cv-2118 (TPG); 06-cv-15297 (TPG), 2017 U.S. Dist. LEXIS 64398, at *35 (S.D.N.Y. Apr. 27, 2017) (citing *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000)). District courts have discretion to determine whether the requested fee is reasonable. *See, e.g.*, *Goldberger*, 209 F.3d at 47. District courts in the Second Circuit are required to assess the reasonableness of attorneys' fees according to the six factors set forth under *Goldberger v. Integrated Resources, Inc.* In addition, attorneys' fees may be calculated by the lodestar method, as a percentage of the class fund, or by using both approaches. *See*, *e.g.*, *Seijas*, 2017 U.S. Dist. LEXIS 64398, at *35-36.

In this case, the requested fees will not be awarded from a "common fund" created for Settlement Class Members. Instead, the Parties have agreed that Class Counsel may seek an award of attorneys' fees, costs, and expenses not to exceed $1,787,500.00, which will be paid by Defendants separate and apart from any relief provided to the Class.[2]

In such cases, the Court's fiduciary role in overseeing a fee award is greatly reduced, because the danger of conflicts between attorneys and class members is diminished. *See, e.g.*, *Jermyn v. Best Buy Stores, L.P.*, No. 08 Civ. 214 (CM), 2012 U.S. Dist. LEXIS 90289, at *23-26 (S.D.N.Y. June 27, 2012); *In re Sony SXRD Rear Projection TV Class Action Litig.*, No. 06 Civ. 5173 (RPP), 2008 U.S. Dist. LEXIS 36093, at *43-44 (S.D.N.Y. May 1, 2008). Courts in this District often approve reasonable fee requests when the award will be paid separately from relief provided to class members. *See Jermyn*, 2012 U.S. Dist. LEXIS 90289, at *23 (finding reasonable the negotiated amount of $1,650,000 for attorneys' fees and expenses); *In re Sony SXRD*, 2008 U.S. Dist. LEXIS 36093, at *44-46 (approving the negotiated fee award of $1.6 million for attorneys' fees and expenses); *Bellifemine v. Sanofi-Aventis U.S. LLC*, 2010 U.S. Dist. LEXIS 79679, at *14-20 (S.D.N.Y. Aug. 5, 2010) (finding reasonable the proposed $4,740,302.51 in attorneys' fees and expenses to be paid by defendant pursuant to the settlement agreement). Indeed, "[t]he negotiation of fee agreements is generally encouraged." *In re Sony SXRD Rear Projection TV Class Action Litig.*, 2008 U.S. Dist. LEXIS 36093, at *43; *Shapiro v. JPMorgan Chase & Co.*, Nos. 11 Civ. 8331 (CM) (MHD) and 11 Civ. 7961 (CM), 2014 U.S. Dist. LEXIS 37872, at *85 (S.D.N.Y. Mar. 21, 2014) ("That the Attorneys' Fee Payment was later separately negotiated weighs in favor of its reasonableness.").

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[2] The Settlement provides that Defendants do not oppose, and will not encourage or assist any third party in opposing, Class Counsel's request for fees, costs, and expenses nor will they contest the reasonableness of the amounts requested. (Settlement Agreement § VIII.B.)

A. Class Counsel's Request For Attorneys' Fees Satisfy The Goldberger Factors

The six factors for analyzing the reasonableness of a fee request under *Goldberger* are: "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of the representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." *Goldberger,* 209 F.3d at 47. All of these factors weigh in favor of approving Class Counsel's attorneys' fee request of $1,610,808.05.

1. Class Counsel Expended Significant Time and Labor In This Litigation

Class Counsel has devoted significant time and resources to this litigation. Over the course of roughly four years, Class Counsel has dedicated over 5,601 hours to the prosecution of these Actions in two forums. (Decl. of William A. Kershaw in Support of Mot. for Atty's Fees, Reimbursement of Expenses and Service Awards for Representative Pls. ("Kershaw Decl.") ¶¶ 25, 28; *see also* Kershaw Decl., Exs. C (Declaration of Edward A. Wallace) at ¶¶ 3-6, D (Declaration of Stephen M. Harris) at ¶ 2, and E (Declaration of Robert L. Starr) at ¶ 2.) For example, Class Counsel has: undertaken substantial efforts to investigate the underlying claims in these cases, including by inspecting plaintiffs' Class Vehicles; propounded, responded to and reviewed significant discovery; engaged in extensive motion practice, including briefing on several motions to dismiss, motions to strike, motions to compel, a motion for reconsideration, a motion for summary judgment and several discovery letter briefs. The parties exchanged approximately fifteen substantive meet and confer letters and met and conferred on numerous other occasions by email and telephone. In addition, Class Counsel retained automotive consultants and an expert to assist with analyzing and prosecuting these Actions. (*See, e.g.*, Kershaw Decl., ¶¶ 4, 6-12, 16-18.)

In light of these significant expenditures of time and resources, and as discussed more fully below, Class Counsel's requested award represents a *negative multiplier* on Class Counsel's lodestar. *See Jermyn*, 2012 U.S. Dist. LEXIS 90289, at *26-27 (finding that the negative lodestar multiplier was "further indication of the reasonableness of the negotiated fee"). This factor weighs in favor of approving Class Counsel's attorneys' fee request.

2. The Underlying Litigation Was Large And Involved Complex Factual and Legal Issues

"Class actions have a well deserved reputation as being most complex . . . ." *Jermyn*, 2012 U.S. Dist. LEXIS 90289, at *27 (internal quotation omitted). Indeed, this case was no exception. This litigation involves roughly four years of multi-state litigation, including against a large national company and a foreign defendant, and initially implicated three different model vehicles spanning ten different model years.[3]

As referenced above, the *Sharma* Action involved extensive motion practice. (Kershaw Decl., ¶¶ 6, 11-12.) Furthermore, Class Counsel submitted Freedom of Information Act ("FOIA") requests to the National Highway Traffic Safety Administration ("NHTSA") regarding vehicle safety recalls related to water intrusion into power lift gate control modules, deposed current and former BMW Technical Service Engineers and a Director of Service for three BMW dealerships, and took two depositions of BMW NA's Federal Rule of Civil Procedure 30(b)(6) designees. They also reviewed close to 3,000 pages of documents produced by BMW NA and a BMW dealership. Plaintiffs Monita Sharma and Eric Anderson produced approximately 760

[3] The vehicle models and model years at issue in the *Sharma* and *Catalano* Actions were later limited to 2004-2010 BMW 5-series vehicles. (Kershaw Decl., ¶¶ 15, 19.)

pages of documents. (Kershaw Decl., ¶¶ 7-9.) Similarly, the *Catalano* Action required significant motion practice and involved substantial discovery disputes, including on difficult jurisdictional issues regarding a foreign defendant in Germany, BMW AG. (*Id.* ¶¶ 16-18.)

This litigation also involved complex factual and legal questions concerning the location of RDC, PDC, MPM, TCU, LOGIC-7, and SDARS modules and other electronic components in the trunk compartment of Class Vehicles and the impact of water damage to those modules and other electronic components. The Actions required an analysis of safety risks related to the alleged design defect and presented complex class certification issues based on the potential variations across vehicle models and varying impacts on water damage to vehicle electrical systems. Indeed, there are approximately 318,000 Class Vehicles at issue in these cases.

The complexity and size of this litigation favors approval of Class Counsel's requested attorneys' fees.

3. Class Counsel Faced Significant Risks At Every Stage Of The Litigation

Class Counsel litigated these Actions purely on a contingency basis and risked nonpayment after prosecuting them for roughly four years in two states. *Jermyn,* 2012 U.S. Dist. LEXIS 90289, at *28 ("this factor recognizes the risk of non-payment in cases prosecuted on a contingency basis where claims are not successful. This can justify higher fees."); *see also Shapiro,* 2014 U.S. Dist. LEXIS 37872, at *73-76 ("It is well settled that class actions are notoriously complex and difficult to litigate . . . . Clearly, Co-lead Counsel undertook enormous financial risks in representing Customers on a contingency basis.")

These risks are even more pronounced considering plaintiffs repeatedly confronted dismissal at the pleading stage—three times in the *Sharma* Action and twice in the *Catalano* Action—as well as on summary judgment in the *Sharma* Action. Plaintiffs also risked not being able to obtain the discovery required for certifying their class claims and proving them at trial, as demonstrated by the Parties' substantial discovery disputes over the course of the litigation. (Kershaw Decl., ¶¶ 10, 18.) Furthermore, plaintiffs would have faced significant risks at class certification based in part on potential variations relating to: vehicle design across numerous model years; the impact of water damage on vehicle electrical systems; Class Members' experiences with and reactions to tire pressure monitor malfunctions; and causation of RDC module malfunctions. Even if plaintiffs were to prevail at class certification, they would have likely faced decertification motions and appeals. To be sure, Class Counsel could have prosecuted these Actions through trial and potential appeals and, at the end of the day, recovered nothing on behalf of the Class.

This factor weighs in favor of approving Class Counsel's requested fees, particularly where "the requested amount falls below Class Counsel's combined lodestar for their work on the case." *Jermyn*, 2012 U.S. Dist. LEXIS 90289, at *28.

4. High quality representation exists here.

The reasonableness of Class Counsel's requested attorneys' fees are further supported by Class Counsel's significant experience and qualifications for litigating the complex issues and claims presented in this case. Class Counsel and their firms possess several decades of experience in class action litigation as well as particular expertise related to automotive defect cases, class action trials and appellate practice. Indeed, Class Counsel include attorneys and firms with national prominence and with reputations as attorneys who zealously pursue a meritorious case through trial and appeal(s). Class Counsel's experience and qualifications enabled them to successfully litigate this case for four years while grappling with the numerous complicated factual and legal issues that this case presented, and ultimately, achieve a significant result for the Class. (Kershaw Decl., ¶ 2, Ex. A; Ex. C at ¶ 2; Ex. D at ¶ 9; Ex. E at ¶ 7.)

5. The Requested Fee Represents A Miniscule Percentage Of The Overall Value Of The Settlement

Class Counsel's requested fee represents a minimal proportion of the overall monetary and nonmonetary benefits available to Class Members under the proposed settlement. To be sure, the Settlement provides for reimbursements of up to $1,500 and covers approximately 318,000 Class Vehicles. Furthermore, the Settlement provides substantial additional relief in the form inspections, relocations, and repairs or replacements of RDC, PDC, MPM, TCU, LOGIC-7, and SDARS modules in Class Vehicles, *free of charge.* A label will also be installed in the trunk compartment of eligible Class Vehicles submitted for service relief, notifying owners and lessees that they should avoid spilling liquids in the trunk compartment due to the sensitive electronic components located in that area. (Settlement Agreement §§ III.A and B.)

"In addition, the requested fee does not reduce or affect the relief provided to the class; rather, it is an amount [BMW] has agreed to pay in addition to the terms of the injunctive relief [and monetary relief]. Where a fee is negotiated and does not reduce any recovery to the class, 'the danger of conflicts of interest between attorneys and class members is diminished.'" *Jermyn*, 2012 U.S. Dist. LEXIS 90289, at *31 (citation omitted). In light of the settlement benefits achieved on behalf of the Class, "the requested fees/costs amount—which result from the application of a negative lodestar multiplier—is reasonable." *Id.*

6. Public Policy Favors Approving Class Counsel's Requested Fee

"Public policy favors the award of reasonable attorneys' fees in class action settlements." *Jermyn*, 2012 U.S. Dist. LEXIS 90289, at *31. Furthermore, courts have recognized "the importance of private enforcement actions and the corresponding need to incentivize attorneys to pursue such actions on a contingency fee basis:

> '[C]lass actions serve as private enforcement tools . . . plaintiffs' attorneys need to be sufficiently incentivized to commence such actions in order to ensure that defendants who engage in misconduct will suffer serious financial consequences . . . awarding counsel a fee that is too low would therefore be detrimental to this system of private enforcement.'"

Shapiro, 2014 U.S. Dist. LEXIS 37872, at *82 (quoting *In re Initial Public Offering Secs. Litig.*, 671 F. Supp. 2d 467, 515-16 (S.D.N.Y. 2009)).

Here, the proposed Settlement will provide substantial relief to Class Members who incurred out-of-pocket expenses to address the alleged defect directly at issue in this litigation and seeks to *affirmatively prevent Class Members from experiencing the alleged defect in the future*. This factor favors approving Class Counsel's requested attorneys' fees as reasonable.

As a result, the *Goldberger* factors are satisfied and Class Counsel's request for attorneys' fees should be approved.

B. A Lodestar Analysis Supports Class Counsel's Requested Attorneys' Fees

"The lodestar method is calculated by multiplying the hours reasonably expended by class counsel by the reasonable market rate for the lawyers' services." *Seijas*, 2017 U.S. Dist. LEXIS 64398, at *35-36; *see also Goldberger*, 209 F.3d at 47. The lodestar calculation has been described by the Second Circuit as a "presumptively reasonable fee." *Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cty. Of Albany*, 522 F.3d 182, 183 (2d Cir. 2007) ("*Arbor Hill*"). "A reasonable hourly rate should align with the prevailing rates in the district in which the court sits." *Seijas*, 2017 U.S. Dist. LEXIS 64398, at *36. In addition, the hourly rates used in making a fee award should be "what a reasonable, paying client would be willing to pay." *Arbor Hill*, 522 F.3d at 184.

Here, Class Counsel has reported approximately 5,601.6 hours for a total lodestar of $2,717,524.50. (Kershaw Decl., ¶ 28.) The range of hourly rates included in Class Counsel's lodestar is between $150 and $700.[4] This District has approved rates in other settlements for complex class action litigation that are comparable or higher to those at issue here. *See, e.g.*, *Velez v. Novartis Pharm. Corp.*, No. 04 Civ. 09194 (CM), 2010 U.S. Dist. LEXIS 125945, at *63 (S.D.N.Y. Nov. 30, 2010) (approving requested attorneys' fees where lodestar was based in part on hourly rates of $750 and finding that "[t]he firm's hourly rates are below the rates charged by firms of this caliber . . . that litigate regularly in this district; they have also been approved in other matters in this district."). Class Counsel's rates reflect the actual and non-contingent hourly rates that they have negotiated and are currently being paid for working on class action matters. (Kershaw Decl., ¶ 27 and Ex. F.)

Moreover, Class Counsel's hours are reasonable in light of the extensive work involved in investigating, developing and actively litigating these Actions in two states over the course of four years. As described above, this litigation was hard-fought at every stage and required substantial expenditures of time and resources, including through: three motions to dismiss and strike class allegations in the *Sharma Action* and two motions to dismiss in the *Catalano* Action; extensive discovery disputes and discovery motions in both Actions; as well as vehicle inspections, a motion for reconsideration and motion for summary judgment in the *Sharma* Action. (Kershaw Decl., ¶¶ 4, 6-12, 16-18.) They reasonably expended additional hours to resolve the litigation and finalize the proposed Settlement Agreement. (*Id.* ¶¶ 20-21.)

Class Counsel's efforts in these Actions and the extraordinary result achieved for the Class would normally warrant a positive multiplier. However, the requested attorneys' fee

[4] Detailed summaries of the hours, rates, lodestar and expenses incurred are set forth and discussed in the Kershaw Declaration and the attachments thereto. Complete and contemporaneous time and expense records for Class Counsel are available for the Court's review upon request.

award in this case represents a ***negative .59 multiplier***. In other words, the requested fee amount represents ***less than two-thirds of Class Counsel's reasonable lodestar***. Moreover, Class Counsel will continue to spend time implementing and monitoring the Settlement, which will continue to drive the "multiplier" downward. *See Bellifemine*, 2010 U.S. Dist. LEXIS 79679, at *19 (noting that future time spent in connection with the settlement will lower the multiplier). Courts regularly award lodestar multipliers from 2 to 6 times lodestar in this Circuit. *See, e.g., Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 623-24 (S.D.N.Y. 2012); *see also In re Sony SXRD*, 2008 U.S. Dist. LEXIS 36093, at *46 (noting that a 1.21 multiplier "is at the low end of the range of multipliers applied in this circuit"); *Bellifemine*, 2010 U.S. Dist. LEXIS 79679, at *18-19 (finding a multiplier of 2.05 within the range of reasonableness).

As a result, a lodestar analysis also demonstrates that Class Counsel's requested attorneys' fees are reasonable.

C. Percentage of the Fund "Cross-Check"

The requested fee amount is also well within the range of reasonableness after applying a percentage of the fund "cross check." Although a monetary fund is not at issue in the proposed settlement, Class Counsel's requested fee is significantly below percentage of the fund ranges approved in the Second Circuit, when comparing the requested fee to the overall monetary and nonmonetary benefits achieved by the Settlement.

"District courts in the Second Circuit routinely award attorneys' fees that are 30 percent or greater." *Velez*, 2010 U.S. Dist. LEXIS 125945, at *59 (citing cases where courts have awarded fees between 28 and 38.26 percent of the settlement fund). "In calculating the overall settlement value for purposes of the 'percentage of the recovery' approach, Courts include the value of both the monetary and non-monetary benefits conferred on the Class." *Fleisher v.*

Phoenix Life Ins. Co., Nos. 11-cv-8405 (CM) and 14-cv-8714 (CM), 2015 U.S. Dist. LEXIS 121574, at *51-52 (S.D.N.Y. Sept. 9, 2015) (citing *Velez*, 2010 U.S. Dist. LEXIS 125945, at *13, *51).

Here, the requested fees of $1,610,808.05 represent a miniscule percentage of the overall monetary value of the proposed Settlement—which provides for up to $1,500 in reimbursements for repairs in a Settlement covering approximately 318,000 vehicles—combined with the nonmonetary value of inspecting, repairing, replacing and relocating RDC, PDC, MPM, TCU, LOGIC-7, and SDARS modules in Class Vehicles. As a result, Class Counsel's requested attorneys' fees satisfies a percentage-of-the-fund "cross-check."

D. Reasonable Reimbursement of Expenses

Class Counsel requests reimbursement of $169,691.95 in litigation costs and expenses incurred in this litigation. "Courts routinely note that counsel is entitled to reimbursement . . . for reasonable litigation expenses." *Anwar v. Fairfield Greenwich Ltd.*, No. 09-cv-118 (VM), 2012 U.S. Dist. LEXIS 78929, at *9 (S.D.N.Y. June 1, 2012) (citing *Reichman v. Bonsignore, Brignati & Mazzotta, P.C.*, 818 F.2d 278, 283 (2d Cir. 1987)).

Over the past four years of litigation, Class Counsel have, for example: filed hundreds of pages of pleadings; taken and responded to discovery; conducted and defended depositions; retained consultants and a vehicle electrical systems expert; conducted extensive factual and legal research; incurred travel costs; and utilized photocopies, faxing, printing and postage for pleadings and communications. (Kershaw Decl., ¶ 26.) All of these costs have been adequately documented by Class Counsel and were incurred for the benefit of the Class. Additional travel and administrative expenses are likely to be incurred through the final approval stage, and Class Counsel will submit a revised number to the Court. In addition, BMW has agreed not to object to Class Counsel's request for reimbursement and reimbursing these expenses will have no impact on the relief available to the Class under the proposed Settlement. (Settlement Agreement § VIII.B.)

E. Class Counsel's Request For Service Awards to the Class Representatives Is Reasonable

Class Counsel requests $3,500 for Class Representatives George Catalano and Eric Anderson in recognition of their work in furtherance of the underlying litigation. (Settlement Agreement § VIII.C.) "Such service awards are common in class action cases and serve to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by the plaintiffs." *Reyes v. Altamarea Group*, No. 10-cv-6451 (RLE), 2011 U.S. Dist. LEXIS 115984, at *24 (S.D.N.Y. Aug. 16, 2011) (citation omitted); *Anwar*, 2012 U.S. Dist. LEXIS 78929, at *10 ("Courts consistently approve awards in class action lawsuits to compensate named plaintiffs for the services they provide and burdens they endure during litigation.") (citation omitted).

Here, the Class Representatives actively participated in the underlying cases and assisted Class Counsel over the course of the litigation. They regularly communicated with Class Counsel concerning the prosecution of these Actions, reviewed and commented on pleadings, reviewed discovery requests and assisted Class Counsel in preparing responses to those requests, and provided documents regarding their respective Class Vehicles in response to BMW's document requests. In addition, Plaintiff Anderson subjected his Class Vehicle to inspection by Class Counsel and their expert as well as to a joint inspection by the Parties' respective experts. Plaintiff Anderson was also deposed by BMW on August 28, 2015. (Kershaw Decl., ¶ 30.) The requested services awards "will be paid separate and apart from any relief provided to the Settlement Class." (Settlement Agreement § VIII.A.)

Courts in this circuit have approved greater incentive awards under similar circumstances. *See, e.g.*, *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 354 (S.D.N.Y. 2014) (approving award of $5,000 to each named plaintiff because they "reviewed draft pleadings and motions, searched for and produced relevant documents, reviewed filings, and communicated regularly with Class Counsel"); *Dupler v. Costco Wholesale Corp.*, 705 F. Supp. 2d 231, 246 (E.D.N.Y. 2010) (approving $5,000 for one named plaintiff because she "reviewed the complaint in the California Action and discussed the facts with counsel."); *Anwar*, 2012 U.S. Dist. LEXIS 78929, at *10 (approving incentive award in the aggregate amount of $25,000).

As a result, Class Counsel's Service Awards request for the Class Representatives should be approved.

III. CONCLUSION

For the reasons described above, Class Counsel respectfully requests that this Court grant Plaintiff's motion for attorneys' fees, reimbursement of expenses and service awards for the Class Representatives.

Dated: May 15, 2017 By: /s/ William A. Kershaw ________________

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed using this Court's CM/ECF notification service, which sent notification of such filing to all counsel of record May 15, 2017.

/s/ William A. Kershaw
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